

On December 8, 1993, the appellant pleaded guilty in Provincial Court to the following:

(a) A charge that between the 8th of March, 1992 and the 1st of May, 1992 he stole a motor vehicle.

(b) A charge that between 15 January, 1993 and 15 February, 1993 he defrauded The Royal Bank of Canada of over \$1,000.

(c) Three charges of using forged cheques in amounts of \$800.00; \$700.00 and \$600.00 on December 4th and December 7th, 1992.

At the sentencing, counsel for the Crown described the offences to the Provincial Court judge in the following terms:

"Your Honour, in relation to these charges, in dealing with the theft charge first, on March 9th of last year, the accused rented a vehicle from Rent-a-Wreck, a Mazda vehicle. He indicated he was going to rent the vehicle for two days, paid a \$250 deposit. On the 11th of March he didn't return it, but called it saying he was going to keep it until the 13th. When he didn't return it on the 13th, he was contacted, and said he wanted to keep the vehicle for a few more days, but was told that he needed a larger deposit. He didn't come in with the deposit, nor did he come in with the vehicle. Eventually, he was picked up. He gave a statement indicating the vehicle was dumped somewhere in Mississauga. The vehicle was not recovered. Approximate value of that vehicle was \$10,500.

In relation to the Royal Bank charges arising here in Amherst, it appears that on February 15th a Royal Bank employee contacted Amherst Town Police, indicating that it had come to the bank's attention that several persons with bank accounts at the Amherst branch were suspected of having sold their personal identification client cards, along with their personal identification numbers, to Mr. Derry. Mr. Derry was using the cards and the numbers to defraud the Royal Bank.

It would appear that he purchased three client cards and numbers between the 15th of January and the 15th of February of this year, from one Peter Gouchie, Michelle Osborne, and Heather LeBlanc. During this period, Derry made deposits into the three bank accounts, via the automated banking machine, using fraudulent cheques. He then made withdrawals, using the client cards and numbers, from the banking machine, until the bank discovered the cheques deposited were N.S.F. Total amount taken from the bank came to \$3,305.

In relation to the Charlottetown matter, Your Honour, if you'll just bear with me, it appears that Mr. Derry purchased an automatic bank card from one Kevin Mansour for \$500. He then went to Mansour's

account and deposited \$2,100 in forged cheques to the automatic banking machine. After they were made, he made withdrawals from the account totalling \$2,100. They were at different, totalling \$800 in one, \$700 in the other, and \$600 in the third. The bank became aware of it and contacted the police."

The record of the offender as presented to the court was, to say the least, disturbing. He had been recently sentenced in New Brunswick on 14 charges involving dishonesty, to a total of 48 months. The circumstances are summarized in the following table:

<u>Offence</u>	<u>Date</u>	<u>Sentences</u>	<u>Date & Place of Sentence</u>
380(1)(a)	9 - 11 Sept./92	8 months	8 April/93 - Fredericton, NB
380(1)(a)	10 - 24 Sept./92	8 months consec.	8 April/93 - Fredericton, NB
380(1)(a)	17 - 24 Sept./92	6 months consec.	8 April/93 - Fredericton, NB
380(1)(a)	8 - 14 Nov./92	1 year consec.	7 May/93 - Moncton, NB
367(1)	28 Jan./93	6 months consec.	4 Nov./93 - Moncton, NB
367(1)	29 Jan./93	6 months concur.	4 Nov./93 - Moncton, NB
367(1)	28 Jan./93	6 months concur.	4 Nov./93 - Moncton, NB
367(1)	29 Jan./93	6 months concur.	4 Nov./93 - Moncton, NB
367(1)	12 Feb./93	6 months concur.	4 Nov./93 - Moncton, NB
367(1)	08 Feb./93	4 months consec.	4 Nov./93 - Moncton, NB
367(1)	08 Feb./93	4 months concur.	4 Nov./93 - Moncton, NB
367(1)	05 Feb./93	4 months concur.	4 Nov./93 - Moncton, NB
380(1)(a)	19-22 March/93	4 months consec.	4 Nov./93 - Moncton, NB
380(1)(a)	1 - 3 Feb./93	4 months concur.	4 Nov./93 - Moncton, NB

As well, the appellant's record went back to 1982 and included at least 13 additional offences in the nature of fraud and theft.

The Provincial Court judge imposed the following sentences: 12 months with respect to the fraud relating to The Royal Bank of Canada; 12 months consecutive with respect to the theft of the motor vehicle and 12 months consecutive for the first offence involving the forged cheques, and 12 months concurrent thereto with respect to the other two offences respecting such cheques.

The appellant's principal contention is that the trial judge failed to apply the principle of totality, having regard to the 14 offences committed in New Brunswick at approximately the same time as the subject offences were committed. These were dealt with by different courts and the circumstances under which they were committed were not before the Provincial Court judge. The 14 offences were not shown to be part of the same transaction as any of the offences under

consideration. If anything, they served as an aggravating and not as a mitigating factor. We are of the opinion that the trial judge did have these offences generally in mind when composing the sentences under appeal.

The five offences for which the appellant was sentenced by the Provincial Court were carefully thought out by him and executed without regard for the economic loss he was imposing on others. The total monetary value was in the order of \$16,000. No remorse was demonstrated and no real effort appeared to have been made on his part to assist in the recovery of the vehicle or to make restitution of the monies wrongfully gained.

With respect to these five matters before the Provincial Court judge, it has not been shown that he erred in the application of the proper principles of sentencing.

Leave to appeal is denied.

J.A.

Concurred in:

Clarke, C.J.N.S.

Hart, J.A.